

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF MERCER ISLAND AND
THE MERCER ISLAND SCHOOL DISTRICT FOR THE IMPROVEMENT,
SCHEDULING, USE AND OPERATION OF THE
MERCER ISLAND HIGH SCHOOL STADIUM AND OTHER FACILITIES**

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into between the City of Mercer Island ("City"), a Washington municipal corporation and the Mercer Island School District ("District"), a Washington corporation.

- A. The City and District enter into this Agreement pursuant to and as authorized by the Interlocal Cooperation Act (Chapter 39.34); and
- B. The City and District partnered to improve the Mercer Island High School Stadium with the installation of a new synthetic field turf system and synthetic track surface in 2002; and
- C. The City and District are mutually interested by means of this Agreement in maintaining the condition of the Mercer Island High School Stadium in order to expand and enhance its use by both the schools and community; and
- D. In 2002, the City contributed Five Hundred Thousand Dollars (\$500,000) toward the Stadium Improvement Project in exchange for the City acting as the coordinator for scheduling of District and non-District use of the Stadium and other associated District facilities as identified in Exhibit II herein; and
- E. The District replaced the synthetic field turf system in 2009 using District funds.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and covenants contained herein, and for other good and valuable consideration, the parties agree as follows:

1. TERM

This Agreement shall be effective when fully executed by all the parties and shall continue until August 31, 2014. The City will maintain the responsibility for scheduling use of the Stadium. This agreement can be extended for additional five year periods by consent of the parties.

2. DEFINITIONS

- A. "BUG" means those Ballfield User Group members described in Exhibit I to this Agreement.
- B. "Stadium" means that certain sport stadium located at the Mercer Island High School at 9100 SE 42nd, Mercer Island, Washington and includes the bleacher areas and announcer's booth, field lights, restrooms, athletic field, track surfaces, and track and field elements contained within the Stadium area, and excludes the concession stand area,

- C. "Stadium Improvement Project" means those improvements which have been made to the Stadium by the District including replacing the existing turf with artificial turf.
- D. "Scheduling Software" means the City's Class activity registration and facility scheduling software or any successor City operated scheduling software.

3. GENERAL PROVISIONS OF THE AGREEMENT

For good and valuable consideration, the City and District agree as follows:

- A. The subject of this Agreement is the scheduling, use and operations of the Stadium.
- B. The City shall schedule all non-District use of the Stadium and the District facilities identified in Exhibit II herein through its Scheduling Software, in conjunction with District staff.
- C. The City will collect and transfer fees from user groups as described in Section 8 of this Agreement.
- D. The maintenance and replacement of the stadium surfaces shall be the sole responsibility of the District.
- E. The Stadium uses authorized by this Agreement are both a municipal and an educational purpose.
- F. The parties will establish procedures to encourage cooperative working relationships between City and District personnel at all levels and to quickly resolve issues.
- G. The parties will act in good faith to implement the terms of the Agreement.
- H. This Agreement is intended to enhance and not interfere with the primary mission of City or District governance.
- I. Where possible, the City and District will pursue opportunities to develop and improve facilities and equipment to support programming by both parties.
- J. All use programming and activities scheduled under this Agreement will comply with City and District policies prohibiting discrimination.
- K. The District utilizes the Scheduling Software for (i) the Stadium; (ii) those District facilities currently loaded in the Scheduling Software and described in Exhibit II; and (iii) such other District facilities agreed to by the City and the District.

4. GENERAL GUIDELINES FOR SCHEDULING AND USE

- A. The Stadium and District facilities identified in Exhibit II herein are intended primarily for school and educational purposes, and are for the benefit of students and the school age population.
- B. The City and District seek to increase general community access to and use of the Stadium. The Stadium is intended to be used jointly, for school and community organized sports purposes, for the benefit of District students, the District, and the City at large. The track at the Stadium is intended to be used for organized sports and the physical fitness of District students and Mercer Island community members.
- C. In planning programs and scheduling activities on school grounds, the security, academic, athletic and physical fitness needs and opportunities of school aged children will be the highest priority and shall be adequately protected.
- D. Users will be expected to cooperate in expediting repair of damage which may occur as a result of scheduled programs.

5. PRIORITIZATION - SCHEDULING

- A. Stadium use shall be scheduled considering a combination of factors including age group served and residency. School District and Parks and Recreation users shall receive highest priority. Other groups or organizations are scheduled based upon the age group served (youth organizations higher priority than adult organizations) followed by residency (Mercer Island residents higher priority than non-residents), as follows:

1. Group 1- District and City Use (**Rental/Use Fee Waived Pursuant to Section 8**)

- (i) First Priority- Mercer Island School District.
- (ii) Second Priority- Mercer Island Parks and Recreation activities and events. Such use shall be no more than 25% of the available time remaining after School District uses.

2. Group 2 - Youth and Adult Organizations (**Rental/Use Fee Collected Pursuant to Section 8**)

- (i) First Priority - Youth organizations or teams whose members reside in the City of Mercer Island. Youth organizations when 75% or more of its members reside within the City of Mercer Island.
- (ii) Second Priority - Adult organizations when 75% or more of its members reside within the City of Mercer Island.

- (iii) Third Priority - Youth organizations or teams when less than 75% of its members reside within the City of Mercer Island.
- (iv) Fourth Priority - Adult organizations when less than 75% of its members reside within the City of Mercer Island.

- B. Subject to Section 5(C) below, the District will use reasonable efforts to maintain at least the overall amount of Category 2 use of the Stadium consistent with usage patterns during the last full annual period prior to the beginning of the term of the Agreement (i.e. September 1, 2008 – August 31, 2009).
- C. The District retains the final authority to restrict access and use by any party if such use interferes with the District's programs or activities. Nothing in this provision shall modify the District's obligations to the City as otherwise set forth in this Agreement.

6. ANNUAL SCHEDULING CONFIRMATION PROCESS

- A. The City and District agree to conduct joint scheduling conferences with other users as needed in January (for the period April to June), April (for the period July to September), August (for the period October to December) and October (for the period January to March) of each year and additionally as needed to coordinate time requirements of the various user groups. Blocks of time will be allocated throughout the day, week and year for use by the District, City and other user groups, in accordance with the priorities established in Section.
- B. For purposes of this agreement the Stadium is assumed to be available for District and non-District uses between 8 a.m. and 10 p.m. daily.
- C. Resolving Space Availability Conflicts
 1. The mutual goal of the City and District will be to maintain program continuity, giving adequate notification of scheduling changes or facility use to allow completion of a program cycle, and where necessary, to relocate programming. When possible, each party will assist the other in locating alternative space.
 2. In the event of scheduling conflicts, facility-based representatives will first attempt to reach resolution on space availability issues. When the conflict involves more than one City and District program, all parties will be informed and involved in resolving the conflict. The central scheduling offices of both parties will, whenever possible, identify options or ways to accommodate the interests of both parties. If agreement cannot be reached on a scheduling request, the issue will be referred to the District Athletic Director or designee and the Parks and Recreation Director or designee. If agreement cannot be reached by these parties, the Superintendent of Schools or designee shall resolve the matter with consultation of the City Manager.

D. Interagency Training.

1. The City and District shall cooperate in developing a training and orientation program for key personnel involved in implementing this Agreement including school principals, secretaries, activity and recreation coordinators, coaches, athletic directors, facility coordinators, physical education teachers, and maintenance staff. Topics to be covered include the history and purpose of joint use, benefits to students/families and City residents, specific provisions established by this Agreement and key implementation procedures.

7. PROCEDURES FOR MANAGING STADIUM USE

A. Central Coordination, Permitting, Record-keeping and Problem Resolution

1. The City Parks and Recreation Department will formally permit all organized sports non-District uses and maintain the annual joint use schedule pursuant to the Scheduling Software and in consultation with District representatives.
2. For Group 2 users as identified in Section 5, permit forms shall stipulate the organized sports use and program for which the permit is being issued, name of person responsible for supervision, spaces and equipment authorized for use, dates and hours of use, requirements for special service and any other information required.
3. The City shall maintain accurate records of use, and shall track and report scheduling issues occurring under this Agreement.
4. Representatives from the District and the City shall form a Stadium Advisory Committee. This committee will meet as needed, but no less than quarterly, to provide operational coordination and planning, and a regular forum for problem resolution on such issues as scheduling conflicts, maintenance, security and vandalism.

B. Changes in Policy, Budget or Organization

1. When either the City or District contemplates a change in policy, budget or organization that could impact the joint use of the other, that agency will consult with the other party far enough in advance so that the other agency can analyze the impacts and plan for the change.

C. Temporary Rescheduling of Priority Use

1. In the event a user group informs the City of its inability to utilize its scheduled priority use, the City may schedule other uses temporarily until the user group is ready to resume its scheduled priority use.

D. Single Use Requests

1. Requests to use the Stadium outside of the annual scheduling confirmation process should be submitted to the City's Parks and Recreation Department. The City will verify in advance with the District Athletic Office that the facility is available at the date and time requested. The request will only be granted if the allotted time and space is available.

E. Use Requirements

1. Stadium management is intended to maximize site access and support of non-District/City organized sports purposes. The District will provide Stadium management services. In order to ensure consistent Stadium management services, the City and District will explore the potential for training City staff as Stadium managers.
2. Security, parking control, and crowd control are the responsibilities of the user group.
3. The user group shall assure the City that all unauthorized vehicles are kept off the Stadium field and away from unauthorized areas.
4. The City and District shall jointly promulgate site operating rules consistent with adopted District policies, regulations, procedures and adopted City ordinances, policies, and resolutions to ensure the safety and welfare of all site users.

F. Access/ Facility Keys

1. The Stadium will be secured at all times. Keys for all areas shall be issued or other means of access provided for curriculum/program events and activities approved under this Agreement. The District shall provide a minimum of four (4) sets of keys to the City for access to Stadium areas. The City agrees not to duplicate keys issued by the District. The District will also issue keys to community members desiring access to the track for running during designated times and hours.

G. Facility Maintenance Responsibilities

1. With each use, the user group shall be responsible for the pre- and post-occupancy preparations. The Stadium will be returned to the condition which preceded use by each user group. Where possible and necessary, access to cleaning supplies will be provided by the District.
2. All user-group owned equipment, materials and gear shall be removed from the Stadium immediately after each use, unless prior arrangements have been made with the District.
3. The District shall be responsible for the primary maintenance to the Stadium to the standard traditionally provided to serve its educational and athletic programs.

H. Access to storage

1. When possible, the District shall make available storage space on site for City program equipment and supplies.

I. Restitution and Repairs

1. The user group shall be responsible to reimburse the District for the repair or damage to a space or area of the Stadium and for District equipment or owner property missing from the Stadium which may occur as a result of scheduled programs for which a permit has been issued. The District shall be solely responsible for enforcing all of the terms and conditions of any user agreements, including without limitation, seeking reimbursement for damage to the Stadium, equipment or other personal property.
2. Inspection of facilities- The District shall, through its designated representative, inspect the Stadium following use by a permitted user group. Inspection shall be directed toward identification of damage to the facilities, field, track and equipment or missing property that may have been caused by the user group through conduct of its program.
3. Reporting method- The District shall notify the user of damage or loss within three (3) working days after inspection.
4. Damages need to be resolved between the District and user group. If not resolved, the District may direct the City to cease renting the Stadium to the user group.

8. FEES AND CHARGES

- A. The City will use best efforts to collect fees (rental and administrative) from user groups and such fees (less City administrative fee) will be transferred to the District according to a schedule to be agreed to by the two parties consistent with District accounting requirements (Exhibit III). These rates shall be reviewed and adjusted annually. The parties agree that Group 2 users as identified in Section 5 will be charged rental fees consistent with this Section. Neither the District nor the City shall be charged a rental or administrative fee for the use of the Stadium without mutual agreement.
- B. In addition, the City may charge Group 2 users for extra material, labor and appropriate overhead costs that either the City or the District may incur because of their use of the facility, including but not limited to property damage, unsecured gates and locks, security response, leftover trash and garbage, etc.

The District shall establish an appropriate rental fee structure for Group 2 users based upon fair market value for rental of similar facilities/amenities (field rental, track rental, light use, equipment preparation, damage deposits, key deposits, etc.) owned and/or operated by other similar school districts and shall adopt such policies accordingly; provided, however, all City and District use is free and provided further, all other BUG users shall receive a thirty percent (30%) discount on such rental fees, exclusive of City administrative fees. In

addition, the District shall charge a fee to community members desiring access to the track for running during designated times and hours.

9. LIABILITY AND INSURANCE

- A. The City and District agree to provide each other with evidence of insurance coverage, in the form of a certificate of insurance from a solvent insurance provider and/or a letter confirming coverage from a solvent insurance pool, which is sufficient to address the insurance and indemnification obligations set forth in this Agreement.
- B. The City and District shall obtain and maintain throughout the term of this Agreement coverage in minimum liability limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate for its liability exposures, including comprehensive general liability, errors and omissions, auto liability and police professional liability. The insurance policy shall provide coverage on an occurrence basis.

10. HOLD HARMLESS/INDEMNIFICATION:

- A. The District shall indemnify and hold harmless the City and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent action or omission of the District, its officers, agents, and employees, or any of them, in performance of this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the City, the District shall defend the same at its sole cost and expense; provided, that, the City retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the City and its officers, agents, and employees, or any of them, or jointly against the City and the District and their respective officers, agents, and employees, or any of them, the District shall satisfy the same.
- B. The City shall indemnify and hold harmless the District and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent act or omission of the City, its officers, agents, and employees, or any of them in performance of this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the District, the City shall defend the same at its sole cost and expense; provided that the District retains the right to participate in said suit if any principle of governmental or public laws is involved; and if final judgment be rendered against the District, and its officers, agents, and employees, or any of them, or jointly against the District and the City and their respective officers, agents, and employees, or any of them, the City shall satisfy the same.
- C. The parties hereby waive, as to each other only, their immunity from suit under industrial insurance, Title 51 RCW. This waiver of immunity was mutually negotiated by the parties.
- D. The provisions of this Section shall survive any termination or expiration of this Agreement.

11. ASSESSMENT OF JOINT USE OUTCOMES

- A. The City, in consultation with the District, will prepare an annual report on Stadium use, including a summary of the total annual hours of facility use supported by this Agreement, benefits derived, penalties assessed, and an assessment of scheduling or operational issues.

This annual report shall be made available annually, during the month of September, to the Superintendent of Schools, the City Parks and Recreation Director, the Mayor and City Council, School Board President and members of the School Board. Copies of this report shall also be made available on the City and District websites, as well as at City and District offices.

12. INTERAGENCY COORDINATION

- A. The Stadium Advisory Committee will:

1. Coordinate implementation and oversee preparation and distribution of the Annual Joint Use Report; and
2. Review this Agreement by November 1 of each year, particularly its guidelines, scheduling process, operating procedures, exchange of benefits, access and fees. Operational changes jointly agreed upon in this review will take effect in the upcoming school year; and
3. Either party can initiate a special meeting to discuss interim problems or propose amendments to this Agreement.

13. GENERAL PROVISIONS

- A. This Agreement contains all of the agreements of the parties with respect to any matter covered or mentioned in this Agreement. No provision of this Agreement may be amended or modified except by written agreement signed by the parties.
- B. Any provision that is declared invalid or illegal shall in no way affect or invalidate any other provision.
- C. In the event any party defaults on the performance of any terms of this Agreement or any party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, the prevailing party shall be entitled to an award of all its reasonable attorney fees, costs, and expenses.
- D. Failure of any party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not constitute a waiver of such breach or default.

- E. Any action, suit, or judicial proceeding for the enforcement of this Agreement shall be brought and tried in the Superior Court or the State of Washington in King County.
- F. The laws of the State of Washington shall govern this Agreement.
- G. The parties agree that this Agreement is consistent with RCW 43.09.210, the "Accountancy Act". The City is receiving adequate consideration from the District in exchange for its payment. The District consideration consists of its transfer of control of the scheduling of the Stadium to the City and allowing additional public use of the Stadium.

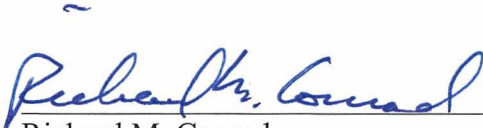
14. TERMINATION


- A. Each party shall have the right to terminate this Agreement in the event the other party is in default of any material term or condition of this Agreement by providing thirty (30) days' advance written notice specifying the basis for such determination. If the other party thereafter fails to commence reasonable steps within the thirty-day period to correct fully and to remedy the default within ninety (90) days from the date of the notice, then the Agreement shall be deemed terminated; provided that, if the nature of the default is such that it cannot be remedied within ninety (90) days, then the Agreement shall not terminate so long as the party in default is proceeding promptly to remedy the default and does so within such additional period as may be agreed by the parties. In the event the District terminates this Agreement following the City's default, the District shall have no obligation to reimburse the City for any amount.
- B. This Agreement may be terminated in whole or in part at any time by either the City or the District, prior to its expiration, for good cause upon ninety (90) days written notice. Good cause shall include the following items: (1) financial hardship as demonstrated by a City Council or District Board of Directors resolution; and (2) the District's need to recapture school grounds for school purposes as demonstrated by a District Board of Directors resolution. In the event such termination affects only part of the Agreement (e.g., the Stadium or any one of the other District facilities), such termination will not impact the requirements of this Agreement for the remaining elements.

This Agreement has been executed in duplicate by the parties hereto and made effective when all parties have fully executed this Agreement.

CITY OF MERCER ISLAND

MERCER ISLAND SCHOOL DISTRICT

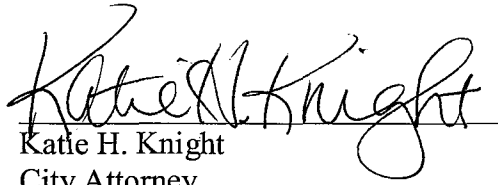

Richard M. Conrad
City Manager


Gary Plano, Ph.D.
Superintendent

Dated: 1-5-2010

Dated: 1-8-2010

APPROVED AS TO FORM:


Katie H. Knight
City Attorney

APPROVED AS TO FORM:

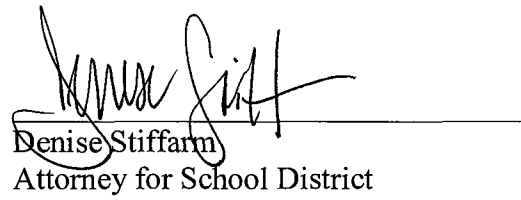

Denise Stiffarm
Attorney for School District

EXHIBIT I

BALLFIELD USER GROUP MEMBERS

Ballfield User Group members are established organizations whose primary mission is to serve youth and/or adult populations of Mercer Island:

- City of Mercer Island Parks & Recreation Department
- Mercer Island School District
- Mercer Island Boys & Girls Club
- Mercer Island Youth Soccer Association
- Mercer Island Lacrosse Association
- Stroum Jewish Community Center

EXHIBIT II

**DISTRICT FACILITIES TO BE SCHEDULED THROUGH SCHEDULING
SOFTWARE**

- Mercer Island High School Stadium
- Mercer Island High School Practice Field
- Mercer Island High School Upper North JV Field
- North Mercer Gym

**EXHIBIT III
FEE SCHEDULE**

<i>Field use is charged by the hour</i>		BUG Youth	BUG Adult	Class I	Class II	Class III
Natural Grass Fields	MIHS JV Field MIHS Upper North Field	\$20	\$20	\$30	\$40	\$40
Synthetic Turf Fields	MIHS Stadium	\$52	\$52	\$75	\$105	\$145
Gyms	North Mercer Gym (Gym Fee effective Jan 1, 2010)	\$30	\$30	\$40	\$50	\$50
Additional Field Fees: Lights: High School Stadium, \$20/hr		*Additional MIHS Stadium Fees: 10% booking surcharge per contract \$25/event Press Box (optional) \$25/event Concessions (optional) \$25/event Ticket Booth (optional)		BUG: Mercer Island Boys & Girls Club, Stroum Jewish Community Center, Mercer Island Youth Soccer, Mercer Island Lacrosse Club, Mercer Island Parks & Recreation, Mercer Island School District Class I: Non-profit, at least 75% residency Class II: Non-profit, less than 75% residency Class III: Commercial for-profit		

District Fee for Community Member access to track during designated times and hours: \$5 per year.